IN THE

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1920.**

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## No. 614.

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CHARLES L. BAENDER, APPELLANT,

*vs.*

FRANK BARNET, AS SHERIFF OF ALAMEDA COUNTY, CALIFORNIA, RESPONDENT.

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## APPELLANT'S ADDITIONAL BRIEF.

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The case of *U. S. vs. Arjona*, cited in the opinion of the court below, is not pertinent, because the question here was neither presented nor decided there. All that was there decided is that Congress has power to punish crimes against the currency of foreign nations under its constitutional power to "define and punish offenses against the law of nations." Without discussing what Congress may or may not do under this authority, whether it may or may not have police power as to other nations, it will suffice to say that under authority to *define* and punish an offense it has greater latitude than in this case, where its power is limited to the punishment of an offense already defined.

There are now three different interpretations of the clause in issue here. Two are by the Circuit Court of Appeals (Brief, p. 6). In the third the District Court, in its opinion

here, reads two elements into the statute and holds that, thus enlarged, the statute is complete. Which of these three constructions is correct, if any? Where a statute is so vague, uncertain, and ambiguous that the courts cannot agree on its meaning, and under which an accused, consequently, cannot be informed of the nature of the charge against him, so that he may make his defense, the statute is just as void as an indictment would be which is similarly defective. To subject an accused to a criminal prosecution under a statute which makes him guilty, (1) regardless of the evil intent, (2) by a construction that possession alone, if without authority from the Secretary of the Treasury, is conclusive proof of his intent to counterfeit, and (3) if he fails to satisfy the jury or court of his innocence by an explanation which the statute fails to even suggest he must make, and which he is precluded from making, and which, if made, the jury and court are authorized by the statute itself to ignore, is surely not due process of law within the meaning of the Fifth Amendment. That is exactly what was done in appellant's case, although it is entirely immaterial what was done in his case, in so far as the validity of the statute is concerned. The record shows, also, that appellant was sentenced for a possession *admittedly* without an evil intent. However, the Circuit Court of Appeals, realizing the necessity for an evil intent to make the possession criminal, read back into the statute the intent which Congress had, by special revision, said should not be there (Baender *vs.* U. S., 260 Fed., 834). It then affirmed the judgment after thus injecting into appellant's case a vital element which was neither charged nor proved and which he always contended should have been charged in the indictment in order to allege an offense, especially *since the burden of proof was not shifted by the statute, but it remained with the prosecution to show the requisite evil intent.* For a statute to arbitrarily prescribe that "whoever, without lawful authority, shall have in his possession any such die," without more, is guilty of a felony, is a denial of the constitutional right of trial by jury, for here

the verdict of the jury and decision of the court have already been predetermined by Congress.

There is only one construction to be given this clause: Congress intended to make the unauthorized possession *prima facie* evidence of guilt and require the party to rebut this presumption. Guilt of what? Of an attempt to counterfeit "the current coin of the United States." Congress then simply neglected to make provision for a defense, thus making the presumption irrebuttable. If the accused is to prove his innocence, why read any elements into the statute? Proof of mere possession would be sufficient to establish the presumption, which could then be *completely* rebutted, if the statute had not made it irrebuttable, by a showing that the possession was not with an intent to use the dies for the purpose of "counterfeiting the current coin of the United States." To make such a showing now is useless, for the courts are authorized by the statute to refuse to instruct the jury to acquit the accused unless they find the accused held possession of the dies with an evil intent. That the court below would refuse to so instruct the jury is evident from its opinion in this case.

A statute is void which makes the presumption of guilt irrebuttable. *Bailey vs. Alabama*, 219 U. S., 219; *McFarland vs. American Sugar Refining Co.*, 241 U. S., 79; *In re Ah Jow*, 29 Fed., 181; *Kilbourne vs. State*, 84 Ohio St. Rep., 247; *State vs. Beswick*, 13 R. I., 211; *Gillespie vs. Peo.*, 188 Ill., 176; *Coffeyville, etc., vs. Perry*, 69 Kan., 297; *Peo. vs. Armstrong*, 73 Mich., 288; *State vs. Julow*, 129 Mo., 163; *Crossman vs. Canning*, 79 N. Y. S., 900; *Matter of Morgan*, 99 N. Y. S., 775; *In re Opinion of Justices*, 208 Mass., 619 *State vs. Griffin*, 154 N. C., 611.

Respectfully submitted,

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